

REMARKS/ARGUMENTS

This is in response to the Restriction Requirement mailed June 26, 2008 for the above-captioned application. Applicants request a two-month of extension of time and enclose the fee.

With traverse, Applicants hereby elect the invention of Group I, Claims 30-42 (not claims 1-42 as indicated in the action, since claims 1-29 have been canceled). Further, Applicants elect Sq. ID No. 271 which is a nucleic acid sequence encoding malate dehydrogenase from clover. Consistent with this election, Applicants have made substantial amendments to the claims in order to facilitate examination of all of the claims.

Claim 30 has been amended to refer to isolated nucleic acids that encode an MDH or MDH-like peptide from clover. The other types of proteins and the other sources have been canceled without prejudice. Claim 33 has been amended to recite only the specific sequence ID numbers that are MDH or MDH-like sequences from clover. Claim 35 has been amended to refer to constructs that comprise nucleic acids of claim 30. The method claims and the peptide claims have been similarly limited to MDH or MDH-like sequences from clover. Applicants submit that all of these claims have a common special technical feature which is the MDH or MDH-like sequences from clover. This feature is not disclosed in the reference cited which relates to a different protein from a different species. Thus, it is believed that unity of invention clearly exists for claims 30, 31, 33, 35, 40-45, 49-56 as amended and newly added dependent claims 58 and 59. Consideration of all of these claims in this one application is requested.

Claims 64 -71 relate to a construct of the type previously claimed in claims (36-39) in which there are two or more nucleic acids selected from the group consisting of:

- (a) nucleic acids encoding citrate synthase (CS) polypeptide or a CS-like polypeptide;
- (b) nucleic acids encoding a malate dehydrogenase (MDH) polypeptide or a MDH-like polypeptide;
- (c) nucleic acids encoding a phosphoenolpyruvate carboxylase (PEPC) polypeptide or a PEPC-like polypeptide,

and in which the nucleic acids are from a clover (*Trifolium*), medic (*Medicago*), ryegrass (*Lolium*) or fescue (*Festuca*) species. Applicants point out that this construct could fall within the scope of the amended construct claims such as claim 35, and indeed claims 66, 68 and 70 would all fall within this scope since they recite specific sequences. However, there are additional components in the construct, and claim 60 as drafted does not require that the MDH component be present at all, nor that it be from clover if it is present. Given the nature of the

relationship of these claims to the present invention, Applicants present the claims here so that the Examiner may determine whether or not there is unity of invention.

Respectfully submitted,

Marina T. Larson ~
Marina T. Larson Ph.D.
PTO Reg. No. 32,038
Attorney for Applicant
(970) 262 1800